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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Amendment of Parts 73 and 74 of)
the Commission's rules to permit)
unattended operation of broadcast)
stations and to update broadcast)
station transmitter control and)
monitoring requirements.)

MM Docket No. 94-130

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**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

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EXECUTIVE SUMMARY

The National Association of Broadcasters ("NAB"), in responding to this NAB-requested Notice of Proposed Rule Making, urges the Commission to dispense with the regulatory requirement for a licensed operator to be "on duty" and in charge of a broadcast station's technical facilities during all hours of station operation. NAB further requests complete rescission of the requirement that any person in charge of station technical operation hold a "Restricted Radiotelephone Operator Permit."

Due to a 1992 amendment to the Communications Act, the Commission now has the legal authority to rescind these rules. Moreover, in an age of highly reliable broadcast equipment, and with the substantial experience gained through broadcasters' use of remote control facilities, the regulatory need for constant human monitoring of this broadcast technical gear no longer exists.

The requirement that any attending operator (if a station opts to maintain attended operation) be "licensed" similarly is unnecessary, in light of: (1) the overall station licensee obligation to ensure technical compliance; and (2) the fact that the FCC's operator licensing scheme for broadcasting long ago dispensed with the requirement for demonstrated technical proficiency (a licensing examination) in order to obtain the personal license.

Finally, and especially for those smaller stations operating on a limited budget, the cost savings that could be realized from: (1) the adoption of unattended operation rules;

and (2) the rescission of the rule that requires operators to hold an FCC license, could help stations reallocate resources that frankly are wasted on compliance with these rules. Instead, these resources better can be spent on other broadcast operations, including the enhancement of stations' issue-responsive programming.

It is our strongly-held view that the benefits of unattended operation should extend to all broadcast facilities, and under all circumstances. Moreover, we recommend that these "unattended operation" and "no restricted permit required" benefits be extended immediately and not be held hostage to the ultimate implementation of the new Emergency Alert System.

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**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters ("NAB")¹ hereby responds to the NAB-requested Notice of Proposed Rule Making ("Notice")² in the above-captioned proceeding. In this rule making the Commission elicits comment on the extent to which the FCC should take advantage of statutory law changes -- enacted

¹ NAB is a nonprofit, incorporated association of radio and television broadcast stations and networks. NAB serves and represents America's radio and television stations and broadcast networks.

²Notice of Proposed Rule Making in MM Docket No. 94-130, 59 Fed Reg. 64378 (December 14, 1994). Several times NAB has urged the Commission to institute rulemaking proceedings that would consider the elimination of the "attended operation" requirement for broadcast stations. See, e.g. Comments of NAB in MM Docket Nos. 91-171 and 91-301, filed November 12, 1993; Letter to The Honorable Reed Hundt, from NAB President and CEO Edward Fritts, dated June 22, 1994.

three years ago³ -- allowing the Commission to dispense with the regulatory requirement for a licensed operator to be "on duty" and in charge of a broadcast station's technical facilities during all hours of station operation. NAB recommends complete rescission of these "attended operation" and "licensed operator" requirements.⁴

As will be shown, below, the Commission now has the legal authority to rescind these rules. Moreover, in an age of highly reliable broadcast equipment, and with the substantial experience gained through broadcasters' use of remote control devices -- often where the duty operator is located at a substantial distance from the transmitter and rarely required to respond to an equipment malfunction -- the regulatory need for constant human monitoring of this gear no longer exists.

The requirement that any attending operator (if a station opts to maintain attended operation) be "licensed" similarly is unnecessary, in light the overall station licensee obligation to ensure technical compliance. Also relevant here is the fact that the operator licensing scheme for broadcasting long

³Telecommunications Authorization Act of 1992, Pub. L. No. 102-538, 106 Stat. 3533.

⁴NAB is recommending that this rule making conclude with the complete rescission of the rules under review. While we acknowledge the Commission's intention to employ a "waiver" of the licensed operator statutory provision (as discussed in more detail, below), this "waiver" (or "modification") parlance is dictated by the Communications Act only for purposes of the statutory requirement. That is, the Commission is not restricted to only "waiving" its own implementing rules -- it can rescind them completely and finally. We urge the Commission to do so.

ago dispensed with the requirement for the demonstration of the operator's technical proficiency in order to obtain the personal license.

Finally, and especially for those smaller stations -- particular radio stations -- operating on a limited budget, the cost savings that could be realized from: (1) the adoption of unattended operation rules; and (2) the rescission of the rule that requires operators to hold an FCC license, could help stations reallocate resources that frankly are wasted on compliance with these rules. Instead, these resources better can be spent on other broadcast operations, including the enhancement of stations' issue-responsive programming.⁵

While acknowledging that the Commission is seeking comment on retention of some reduced "attended operation" requirements for various station types and operating conditions (e.g. for AM directional antenna stations and facilities without an Automatic Transmission System ("ATS")), it is our strongly-held view that the benefits of unattended operation should extend to all broadcast facilities, under all circumstances. Moreover,

⁵NAB notes that these proposed "unattended operation" rule changes would in no way diminish a broadcaster's responsibility to monitor its transmitter adequately, and to make any adjustments necessary to comply with FCC technical standards. These rule changes also would not affect the requirement that stations offer locally-responsive programming. Nor would these proposed rules alter the current requirement that stations have a "staff and management" presence during regular business hours. The proposed rules would, however, spare stations from having to pay for station employees -- or for a "monitoring service" -- to check station operation regularly. Rather, stations would be given the option of employing full automation gear at all times.

we recommend that these "unattended operation" and "no restricted permit required" benefits be extended immediately, and not be held hostage to the ultimate implementation of the new Emergency Alert System ("EAS").⁶

In addition to addressing these major elements of the Commission's Notice, NAB also offers guidance on various details of the FCC's proposed unattended operation regulatory scheme, including our comments on the wording of various aspects of its proposed regulations.

II. ELIMINATING ATTENDED OPERATION/OPERATOR LICENSING RULES IS SUPPORTED BY MODIFIED STATUTORY POLICY AND FUNDAMENTAL NOTIONS OF EFFICIENT, RATIONAL COMMUNICATIONS POLICY.

A. Statutory Law Changes and Relevant Legislative History

Almost from the very beginning of Congressional deliberations over communications regulation, there was a concern over the burdens imposed by the "attended operation" requirement. The original Section 318 required "attended operation" by all facilities operating pursuant to an FCC license. Three years after the passage of the Communications Act, however, the Congress amended the Act,⁷ largely on the basis that it imposed unreasonable expenses.⁸

⁶See Report and Order and Further Notice of Proposed Rule Making in FO Docket Nos. 91-171 and 91-301, 59 Fed. Reg. 67090 (December 28, 1994).

⁷Pub. L. No. 75-26, 50 Stat. 56 (1937).

⁸See H.R. Rep. No. 292, 75th Cong., 1st Sess. 1-3 (1937).

Here the Congress was persuaded that the burdens of attended operation should be limited by statute to only four areas -- one of which was broadcasting (except for translator-type facilities). This action was taken largely in response to a party holding an "experimental license." That party -- a Harvard scientific laboratory -- noted that it was required to hire persons who, during most hours, did nothing but watch meters to be sure the station was on its proper frequency.⁹ The laboratory worked in conjunction with FCC engineers to develop an automatic device which prevented improper operation of the station. The lab then petitioned the Commission to use this automation device because it was too expensive to keep an operator on duty at all times. However, because of the strict wording of the Act, the Commission denied the application and the laboratory discontinued its experimental operation.¹⁰

Several FCC Commissioners used this example in their request that Section 318 be amended to allow unattended operation. Commissioner Irvin Stewart noted that the Harvard laboratory example was "... but one of a number of instances in which the actual operation of a station by a licensed operator is impractical and unnecessary from an engineering standpoint."¹¹

⁹Id. at 2.

¹⁰Id.

¹¹Id.

Just over three years ago the House Committee on Energy and Commerce made a similar observation in its consideration of legislation further amending Section 318:

This section amends Section 318 of the Communications Act to permit broadcasters, as circumstances require, to substitute automated technology for human operators. The Committee believes that the increased flexibility conferred by contemporary computer technology likely will make the operation of stations more cost-effective and efficient¹²

Shortly thereafter the Congress amended Section 318 to allow the Commission to afford broadcasters the benefits of unattended station operation.¹³ Now the FCC has the authority to take the actions requested earlier by NAB and underscored today in these comments.

B. The Reliability of Broadcast Transmission/Control Equipment

As the Commission, broadcasters and the public are aware, the state of the electronic art has advanced to a point that simply could not be envisioned in the 1930s. Today the likelihood of contemporary-technology broadcast equipment going off frequency or failing in any other meaningful way is very remote. Moreover, stations have available to them a variety of marketed electronic, automated devices fully capable of correcting any sensed imperfections of station technical -- and

¹²House Report No. 102-207 (H.R. 1674), September 17, 1991.

¹³Telecommunications Authorization Act of 1992, supra note 4.

either correcting these problems immediately or shutting the station down instantaneously.

Each year, at the NAB annual spring convention, and at our NAB Radio Show held in the fall, myriad equipment manufacturers display and offer for sale highly reliable broadcast gear that possesses virtually none of the unintended interference potential that characterized broadcast equipment available when Section 318 was last amended.

Modern transmitters and remote control systems are a far cry for the temperamental, maintenance-intensive systems that were in use when the Commission adopted its current rules. Today's systems typically employ digital circuitry and microprocessor controls that provide an extraordinary level of stability and reliability. Indeed, such transmission facilities are well-suited for unattended operation.

**C. The Restricted Radiotelephone Operator Permit
Should Not Be Required of Any Voluntarily
"Attending Operators"**

NAB strongly concurs with the Commission proposal to eliminate the requirement that human beings assuming control of stations' technical operation hold a Restricted Radiotelephone Operator Permit ("RP"). The current requirement to apply for and hold an RP imposes an unnecessary regulatory burden on both broadcasters and the FCC itself; it also imposes a -- though seemingly minimal -- financial burden on broadcast employees.

There are two overwhelming reasons why there is no need for station employees to hold an operator's license -- regardless of whether automated station operation is involved. First, the licensee of the broadcast station assumes the ultimate responsibility for operation of the station consistent with the parameters of the station license.¹⁴ That is reason enough for a broadcaster to make sure that its operation is compliant. Second, and for nearly 15 years, "licensed operators" have been able to operate broadcast facilities without making any demonstration -- to the FCC -- of personal technical proficiency.¹⁵ Instead, it is the broadcast licensee that evaluates its employees' technical knowledge and skill in the hiring process and during each broadcast day.

The Commission -- simply stated -- wastes its resources and broadcasters' resources in requiring that broadcast employees involved in station technical operation file an FCC Form 753 to obtain the license. Indeed, the current \$45.00 fee for this permit is a frequent topic of broadcaster complaint -- especially

¹⁴This fact also supports the concept that broadcast stations no longer need transmitter duty operators. NAB agrees with the Commission's assessment that "... modern monitoring and control equipment had rendered the need for the transmitter duty operator largely superfluous" (Notice, supra note 2, ¶ 6.) This further supports the premise -- and there is no evidence to the contrary -- that the lack of a duty operator would not encourage negligence nor irresponsibility.

¹⁵See Fourth Report and Order in Docket No. 20817, 46 Fed. Reg. 3550 (July 8, 1981). Prior to this fourth in a series of actions in Docket No. 20817, the FCC required the operators of broadcast stations to obtain a "First Class" license -- a license granted only by examination. The current RP requires no examination whatsoever.

from those commercial¹⁶ broadcasters who regularly employ student interns that are hard pressed to find the money to pay for the license.

We strongly urge the Commission to adopt its proposals and eliminate the requirement for any broadcast station personnel to hold an RP.

D. Avoiding Unnecessary Expenses -- Especially for Small Stations

It is axiomatic that the Commission's "unattended operation" and "RP"- related proposals would, if adopted, result in significant cost savings for broadcasters. Indeed, for smaller station operations -- particularly radio stations -- the option to "go fully automated" and avoid RP fees is one which could have a dramatic effect on stations' ability to maintain a strong bottom line. Radio stations, particularly in smaller markets, have a smaller potential revenue base. Since much of the cost of running a radio station is fixed and unavoidable, many stations are barely meeting their costs; others are unprofitable. Any relief in reducing unnecessary costs will aid these stations, allowing them to continue providing needed local services.

¹⁶For several years the Commission has suspended the RP fee requirement for employees of noncommercial broadcast stations.

III. COMMENTS ON SPECIFIC TECHNICAL MATTERS

NAB agrees that the Commission should focus less on "how-to" language in the rules and should craft regulations that will allow broadcasters to implement "the most cost effective operating and maintenance policies appropriate for their stations."¹⁷ Because each station must address its own individual situation, and in keeping with the Commission's desire further to reduce the regulatory burdens on its licensees, it is imperative that the Commission allow licensees to choose a method of compliance that best works for each station.

A. The Commission Should Not Require ATS for Unattended Operation.

In the Notice, the Commission asks if unattended operation should be permitted only when a station is equipped with an Automatic Transmission System ("ATS").¹⁸ NAB believes that, given the high level of stability and technical sophistication of modern transmitters and related gear, the use of ATS-type remote controls may be unnecessary. Licensees have many alternative methods for monitoring and controlling their transmission systems. In some cases, these functions may be an integral part of the transmitter itself; or a broadcaster may choose to use one of the many available computer-based systems and operate the transmitter as part of a total station automation

¹⁷Notice, supra note 2, ¶ 7.

¹⁸Id. ¶ 10.

system. To require arbitrarily a specific type of remote control gear is contrary to the Commission's desire not to focus on "how-to" language in the rules. We urge the Commission not to require the use of ATS-type remote control systems as a prerequisite to affording the benefits of unattended operation.

B. Special Considerations for Unattended Operation of AM Directional Arrays.

The Commission has some basis for concern about the operation of AM directional antenna facilities. However, NAB continues to believe that, given the state-of-the-art in transmitter and remote control technology, even the most complex AM directional array can be operated consistently and reliably in an "unattended" mode. If computers can be entrusted with airplanes full of people, then certainly they can be trusted for switching AM stations from daytime to nighttime modes and in monitoring AM directional arrays.

Further, we do not believe that stations employing AM DAs should be required to perform additional tasks beyond those that are required in the current rules. We specifically refer to proposed Section 73.62(b)(1), which would impose a specific logging requirement on AM DA stations. This proposed requirement, as written, is vague at best and, further, is completely unwarranted. Once again, the addition of such a rule is contrary to the Commission's stated goal of lessening the regulatory burdens on licensees -- in this proceeding and elsewhere.

Simply stated, stations with AM directional arrays should not have to pay a penalty for operating unattended. NAB believes that, so long as a broadcaster can demonstrate compliance with the Commission's technical standards, responsible licensees should be allowed to equip their businesses as they see fit. We urge the Commission to allow all stations, including AM DAs, to operate unattended, and that no additional requirements be imposed for stations' technical operations.

C. Tower Lights

An FCC licensee's obligation to maintain its tower lights in good working order is a long-standing part of the Commission's rules (see generally Part 17).¹⁹ NAB believes that a broadcaster has many options at his or her disposal which can be used to comply with the tower lighting rules. Section 17.47 indicates that tower lights are to be observed at least once daily. However, as the Commission points out in the Notice, the current rules do not require specifically that this function be performed by the duty operator.²⁰ Thus, NAB believes that the human monitoring of tower lights need not be specifically required for stations moving to unattended operation.

¹⁹NAB notes, additionally, that the Commission, in a separate proceeding, has proposed to adjust its rules on, inter alia, tower lighting. The proposed rules in that proceeding would, in many instances, lessen broadcasters' primary responsibility. See, Notice of Proposed Rule Making in Gen. Docket No. 95-5, adopted January 12, 1995.

²⁰Notice, supra note 2, ¶ 15.

The technology does exist -- and has for many years -- to automate the monitoring of tower lights. These systems typically are of two varieties. One type constantly monitors the condition of the tower lights; the other type checks the status of the lights "on request." If a broadcaster chooses to automate tower light monitoring as part of an unattended operation scheme, each of these types of systems is highly reliable and would offer a level of compliance that far exceeds the current rule requirement.

D. Minimum Time Period for Non-Compliance Correction.

NAB applauds the Commission's efforts to try to harmonize the various time limits, in the Rules, under which broadcasters are allowed to correct out-of-tolerance conditions for remote control operation. Generally, however, we believe that the time limit proposed in the Notice²¹ is unnecessarily short and may not allow sufficient time for a station engineer to take the appropriate corrective action.

Regarding out-of-tolerance conditions that pose little or no threat to increasing interference to other stations, NAB believes that the existing 10-day, six-month Special Temporary Authority (STA) time period is adequate. The Commission has presented no specific reason why this time limit should be changed. We do agree, however, that this STA policy should be made consistent -- across all applicable rule sections.

²¹Id., ¶¶ 28-31.

Moreover, NAB has no objection to this policy being applied to non-remote controlled operation as well.

The Commission also asks for comment on what type of out-of-tolerance conditions -- other than those listed in the Notice -- can exist without presenting a danger of interference. NAB believes that it is impossible to catalog all of the possible parameters that would fall into this category, due to the many different types of transmitters in use and in the marketplace. Each transmitter is different and must be considered separately. We recommend that the Commission pursue defining, in more specific terms, what it considers to be an "interfering condition." Then each licensee, based on its knowledge of a specific transmitter, would be able to determine whether or not a particular out-of-tolerance condition would result in the potential for interference.

In the instance where an out-of-tolerance condition exists that could result in interference to other stations, we do not believe that three minutes is sufficient time to respond to such a condition. Under the current rules, the Commission requires stations using an ATS to correct such conditions "immediately" or go off the air. While NAB appreciates the importance of an immediate response, three minutes may not be practical and we recommend a 1-3 hour time frame. There may be many types of out-of-tolerance conditions that could be corrected by remote control. Also, station personnel may not immediately have sufficient information to determine the exact nature of the

malfunction. Licensees should be afforded ample time to assess and respond to these conditions. NAB urges the Commission to adopt at least a one-hour response and correction time.

E. Permissible Connection Methods for Remote Control

NAB supports the Commission's proposal²² to allow licensees to use any method for connecting their remote control and monitoring equipment to their transmitter, so long as it permits the operator to turn the transmitter off quickly. However, requiring an alternate method for on/off control, such as a dedicated link, is not acceptable. Given the high level of reliability of today's switched telephone networks and dial-up type remote control systems, there is no reason to believe that a broadcaster could not connect to the transmitter site quickly and reliably. The inclusion of an alternate, full-time on/off control capability is an unnecessary burden that cannot be justified.

F. The Commission Should Not Require Licensees To Keep Transmitter Maintenance Logs.

In the Notice, the Commission states, in proposed Section 73.1580(b), that licensees may be required to produce a record of transmitting system measurements, adjustments and preventive maintenance procedures and schedules.²³ This is a

²²Id. ¶ 40.

²³Id. at Appendix A.

de facto requirement that stations return to keeping an old-style "transmitter and maintenance log." That the Commission has even contemplated a return to such a requirement - one which was removed from the Commission's rules years ago -- is wholly at odds with what should be the Commission's goals here. Proposed Section 73.1580(b) should not be adopted.

IV. **THE RELATIONSHIP BETWEEN UNATTENDED OPERATION AND THE NEW EAS RULES**

As part of its set of proposals in this proceeding, the agency has asked for comment on whether the FCC should withhold the full benefits of unattended station operation until the time that the station converts to EAS equipment and procedures. NAB believes there is no reason to await EBS conversion²⁴ as a prerequisite to the Commission allowing broadcast stations to operate in an "unattended fashion."

There may be broadcasters that wish to implement the new EAS system as soon as equipment becomes available -- ahead of the Commission's established time table -- and these stations, of course, should be allowed to begin unattended operation as soon as their EAS equipment is installed. Making the unattended operations rules effective immediately will offer a strong incentive for all licensees to implement EAS sooner rather than

²⁴As explained in the Commission's EAS decision, the requirements for conversion from the EBS regime to the EAS system will be phased in over several years. Indeed, this decision is still subject to formal reconsideration and to other factors that might result in further delays in EAS conversion.

later. Moreover, the technology exists to automate current EBS functions. We urge the Commission to take whatever procedural and substantive steps allow near-term unattended operation under the current EBS.

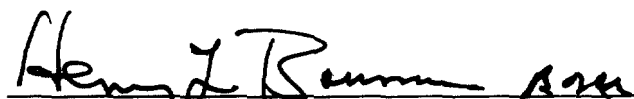
V. CONCLUSION

For the reasons stated herein and in other comments and letters we previously have submitted to the Commission, NAB urges the FCC to eliminate the requirement for attended station operation -- as well as the related requirement that any person responsible for a station's technical operation file an application with the FCC in order to obtain a Restricted Radiotelephone Operator Permit. By taking these actions, the Commission will relieve broadcasters, and itself, from unnecessary and counterproductive burdens.

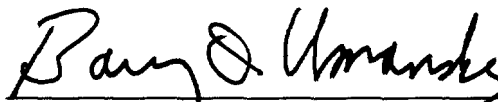
We urge that these actions be taken as soon as practicable.

Respectfully submitted,

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